

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

SANDRA LEE,

Plaintiff,

v.

RUBIN LUBLIN TN, PLLC and BANK OF
AMERICA, N.A.,

Defendants.

Case No. 3:17-cv-_____

NOTICE OF REMOVAL

COMES NOW, Rubin Lublin TN, PLLC (“Rubin Lublin”), by and through its undersigned counsel, and files this Notice of Removal from the Davidson County Circuit Court pursuant to 28 U.S.C. § 1441, showing this Honorable Court as follows:

1. On February 10, 2017, Sandra Lee (the “Plaintiff”) filed her Complaint (the “Complaint”) against Rubin Lublin and Bank of America, N.A. in the Circuit Court of Davidson County, Tennessee. This case is styled as *Lee v. Rubin Lublin TN, PLLC et al.*, and was given Case No. 17C363, (the “Civil Action”). True and accurate copies of all documents filed to date in the Civil Action are collectively attached hereto as **Exhibit “A”**.

2. Rubin Lublin was served with process via certified mail on February 13, 2017. Thus, removal is timely under 28 U.S.C. § 1446(b).

3. The United States District Court for the Middle District of Tennessee, Nashville Division, embraces Davidson County, Tennessee. Removal to this Court is therefore proper under 28 U.S.C. § 1441(a).

4. This Notice of Removal is being filed in accordance with 28 U.S.C. § 1446 and Fed. R. Civ. P. 81(c). In compliance with 28 U.S.C. § 1446(d), Defendants will, upon docketing of the Notice of Removal in this Court, file a copy of the Notice of Removal with the Clerk of the Circuit Court of Davidson County, Tennessee.

5. Bank of America, N.A. advises Rubin Lublin that it consents to this removal, and will file its consent soon. As noted below, Moonlighters Enterprises, Inc. is a fraudulently joined defendant, and therefore its consent to removal is not required. *Chambers v. HSBC Bank USA, N.A.*, 796 F.3d 560, 564 (6th Cir. 2015) (citation omitted).

DIVERSITY OF CITIZENSHIP JURISDICTION

6. The basis for this removal and federal court jurisdiction is that this Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a), because this is a suit between citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. The Plaintiff's Complaint alleges that the Plaintiff "is a residence [*sic*] and citizen of Davidson County, Tennessee" Compl., ¶ 1. Accordingly, the Plaintiff is deemed to be a citizen of Tennessee for purposes of diversity jurisdiction.

8. Defendant Rubn Lublin TN, PLLC is a Tennessee limited liability company. The sole member of the Defendant is Rublin Lublin, LLC. Rubin Lublin, LLC is a Georgia limited liability company with six members: Peter L. Lublin, Glen Rubin, Heidi Billington, Victor Kang, Tense Cook, and Lisa Caplan. All of these individuals are residents of and domiciled in Georgia. Thus, Rubin Lublin is deemed to be a citizen of Georgia for purposes of diversity jurisdiction. *See Delay v. Rosenthal Collins Group, LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009) ("a [LLC] has the citizenship of each of its members.")

9. Bank of America, N.A. is a national banking association with its main office, as stated in its articles of association, in North Carolina. Accordingly, Bank of America is deemed to be a citizen of North Carolina for purposes of diversity jurisdiction. *See Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006) (national bank is considered citizen of state where its main office is located per its articles of association).

10. Moonlighters Enterprises, Inc. ("Moonlighters") is a corporation organized under the laws of Tennessee, with its principal place of business in Memphis, Tennessee. However, Moonlighters is a fraudulently joined Defendant, and as such, its citizenship can be disregarded by this Court. *See Walker v. Philip Morris USA, Inc.*, 443 F. App'x 946, 951-54 (6th Cir. 2011). Rubin Lublin's brief in support of its contention that Moonlighters is fraudulently joined is attached hereto as **Exhibit "B"**.

11. Plaintiff previously filed this same lawsuit on February 10, 2017, in the Circuit Court for Davidson County and did not name Moonlighters as a party. Rubin Lublin and Bank of America timely removed that action to the Middle District of Tennessee on March 9, 2017. (Case No. 3:17-cv-00500, Lee I).

12. On April 20, 2017, Plaintiff filed a Motion for Leave to amend the Complaint to add Moonlighters Enterprises, Inc. as a party to the litigation. [Lee I, Dkt. No. 23]

13. On May 2, 2017, Rubin Lublin filed a Response in Opposition and attached the declaration of Matthew Lynch, the president of Moonlighters Enterprises, Inc. [Lee I., Dkt. No. 30], In this declaration, Mr. Lynch attested that he received a telephone call from Jim Roberts, counsel for Plaintiff and that Mr. Roberts "explained that he was an attorney representing someone 'who may have to sue' Memphis Moonlighters" because "his client needed to have the case moved from federal court to a local court." See Lee I, at [Doc. 30-1].

14. On May 5, 2017, just days after Rubin Lublin filed its Response in Opposition, Plaintiff filed a Voluntary Dismissal of Lee I [Lee I, Dkt. No. 38] and then promptly refiled this case in state court with Moonlighters Enterprises, Inc. as a named defendant.

15. The amount in controversy exceeds \$75,000, as the Plaintiff's Complaint seeks \$160,000.00 in damages in Count I, *see* Compl., ¶ 72, \$250,000.00 in damages each in Counts II, III, and IV. *Id.* at ¶ 80, 87, 95.

16. Based on the foregoing, there is complete diversity of citizenship between the Plaintiffs and the Defendants and the amount in controversy is satisfied. *See* 28 U.S.C. § 1332(a); 28 U.S.C. § 1441(a).

WHEREFORE, Defendants pray that this Civil Action proceed in this Court as an action properly removed, and that no further proceedings be had in said case in the Circuit Court of Davidson County, Tennessee.

Respectfully submitted this 25th day of May, 2017.

HALL BOOTH SMITH, P.C.

By: /s/ H. Buckley Cole
H. Buckley Cole (BPR # 11811)
Fifth Third Center
424 Church Street, Suite 2950
Nashville, Tennessee 37219
(615) 313-9911 (telephone)
(615) 313-8008 (facsimile)

Attorney for Rubin Lublin TN, PLLC

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of May, 2017, served all parties in this matter with the foregoing by placing a true and correct copy of same in the United States Mail, with first-class prepaid postage affixed thereto, properly addressed as follows:

James D.R. Roberts, Jr.
P.O. Box 331606
Nashville, TN 37203

HALL BOOTH SMITH, P.C.

By: /s/ H. Buckley Cole
H. Buckley Cole (BPR # 11811)